Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Rules and Regulations Implementing the	)	CG Docket No. 02-278
Telephone Consumer Protection **Act** of 1991	)	CC Docket No. 92-90

COMMENTS OF SBC COMMUNICATIONS INC.

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SBC Communications Inc. (SBC), on behalf of itself and its subsidiaries, hereby files these comments in response to the Notice of Proposed Rulemaking (NPRM) issued in the above-captioned docket.[1] As SBC demonstrates herein, the Commission should retain its existing rules implementing the Telephone Consumer Protection Act of 1991 (TCPA), with modifications, and refrain from adopting a national do-not-call list.

I. INTRODUCTION AND SUMMARY

Congress enacted the TCPA in 1991 to address an increase in the number of telemarketing calls and protect residential telephone subscribers from unwanted telephone solicitations.[2] In so doing, Congress recognized that any such regulations would have to "balance individual privacy rights, public safety interests, and commercial freedoms of speech and trade[.]"[3] Congress directed the Commission to consider various alternatives to effect this

[1] Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, Notice of Proposed Rulemaking and Memorandum Opinion and Order, CG Docket No. 02-278, CC Docket No. 92-90, 17 FCC Rcd 62648 (2002) (NPRM).

[2] Telephone Consumer Protection Act of 1991, P.L. 102-243, 105 Stat. 2394 (1991) ("The purposes of the bill are to protect the privacy interests of residential telephone subscribers by placing restrictions on unsolicited, automated telephone calls to the home...").

[3] S. Rep. No. 102-177, at 6. (1991)

balance. Among the alternatives identified by Congress were company-specific do-not-call lists and a national do-not-call registry.[4]

After developing an extensive record,[5] the Commission adopted rules implementing the TCPA, including rules requiring entities making telephone solicitations to establish and maintain company-specific do-not-call lists. The Commission decided to require company-specific lists, rather than a national do-not-call registry, because it found that such lists would best balance residential consumer privacy interests with the First Amendment rights of telemarketers to market their products.[6] It noted, in this regard, that such lists would allow consumers to selectively halt calls, instead of making an all-or-nothing choice.' It also found that company-specific do-not-call lists would be more economical, easier to establish and maintain, more accurate, easier to administer, and better protect the confidential information of consumers.* In contrast, the Commission found that a national registry would be inefficient, ineffective and costly to maintain and administer.'

In this proceeding the Commission seeks comment on whether these conclusions remain valid. Citing changes in technology and increased consumer complaints against unwanted solicitations, the Commission now asks "whether the company-specific do-not-call approach adequately balances the interests of those consumers who wish to continue receiving

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[4] 47 U.S.C. § 227(c) & (d)

[5] Rules and Regulations Implementing the Telephone Consumer Protection Act **of** 1991, **Report and** Order, CC Docket No. 92-90, 7 FCC Rcd 8752 (1992) ("1 992 Order").

[6] *Id.* at 8765-66.

[7] ***Id.***

[8] *Id.*

[9] *Id.* at 8760.

telemarketing calls, and *of* the telemarketers who wish to reach them, against the interests *of* those who object to such sales calls."[10] It asks, in particular, whether it is "unreasonably burdensome" to require consumers who wish to restrict telemarketing calls from multiple telemarketers to repeat their request not to be called on a case-by-case basis as calls are received. It also asks whether company-specific requests are typically honored and whether consumers with hearing and speech disabilities are able to convey such requests.

As discussed below, there is no basis for abandoning company-specific do-not-call lists in favor of a national registry. The Commission carefully weighed the costs and benefits of each approach — and, importantly, the First Amendment rights at issue — when it initially implemented the TCPA, and the NPRM presents no basis for a fundamental retreat from the Commission's prior conclusions.

The Commission points to technological changes — specifically, the widespread use of predictive or automatic dialers and answering machine detection technology — as possibly reducing the effectiveness of company-specific do-not-call lists. SBC does not agree that consumers feel frightened or harassed by the proper use of these devices, but, in any event, if the Commission identifies problems with their use, it can address those problems directly. These devices present no basis for abandoning the company-specific approach altogether. Moreover, as the Commission acknowledges, other technological changes and new options not previously available make it ***easier*** for consumers to protect themselves against unwanted telephone solicitations without a national registry. Caller ID, Privacy Manager, and Anonymous Call Blocking services, for example, enable consumers to further restrict telemarketing calls, while not foreclosing welcome solicitations. Further, consumers also can avail themselves of private

[10] NPRM **at** ¶ 14.

sector do-not-call lists. Additionally, many states have implemented state do-not-call lists, which are also available to assist consumers in managing telephone solicitations.

Nor does the increase in consumer complaints cited by the Commission demonstrate that a national do-not-call registry is necessary. An increase in complaints, in and of itself, says nothing about the reason for or validity of those complaints. That increase may indicate a need for tougher enforcement of existing rules or even clarifications or minor modifications of those rules. Absent an analysis of the nature of these complaints, the Commission cannot reasonably conclude that its existing rules must be scrapped altogether in favor of a far more restrictive regime. Indeed, any such conclusion in this context would raise significant constitutional issues, given that the First Amendment requires that restrictions on commercial speech be "narrowly tailored" and no more extensive than necessary to serve the governmental interest.

In addition to retaining its company-specific approach to telemarketing restrictions, the Commission should retain, but slightly modify, its existing "established business relationship" exemption. Specifically, the Commission should hold that the exemption applies for a period of one year for prior business relationships and that it includes affiliates of the qualifying entities that provide reasonably-related products and services, as well as the entities themselves. The Commission also should retain its existing time of day restrictions.

II. THE COMMISSION SHOULD RETAIN ITS EXISTING RULES IMPLEMENTING THE TCPA.

In the NPRM, the Commission asks whether it should revisit its rules implementing the TCPA, the most important of which was its implementation of company-specific do-not-call ***requirements.*** **As** discussed below, the Commission's prior conclusions remain valid today. The Commission, accordingly, should reaffirm its existing company-specific do-not-call and associated rules, with several modifications.

A. The existing company-specific do-not-call requirements balance the interests **of** consumers that wish **to** receive telemarketing solicitations against those who chose not to receive such calls.

The Commission has previously concluded that a company-specific do-not-call list best balances the "privacy interests of residential telephone subscribers against the commercial speech interests of telemarketers and the continued viability of a valuable business service."" In so concluding, the Commission found that a company-specific do-not-call list was the most effective and efficient means to enable subscribers to avoid unwanted telephone solicitations.'* Specifically, the Commission found that such lists would be easy to establish and maintain; would be more accurate than other alternatives; would allow subscribers to selectively halt calls from telemarketers from whom they do not wish to receive telephone solicitations; would allow residential telephone subscribers to "terminate a business relationship in instances in which they are no longer interested in that company's products or services;" would best protect residential subscriber confidentiality because they would not be universally available; would place the costs of protecting consumer privacy on telemarketers rather than telephone companies or consumers; and would impose minimal costs on residential telephone subscribers.[13]

In adopting the company-specific approach, the Commission expressly considered and rejected the national do-not-call list approach. The Commission concluded that a national database would be too costly and difficult to maintain in an accurate form; that it would not eliminate all unsolicited calls, given business and organization exemptions; that it could present problems in safeguarding telemarketer proprietary information; that it would risk the privacy of

[11] 1992 ***Order,*** 7 FCC Rcd at 8765-66

[12] *Id.*

[13] *Id.*

subscribers with unlisted or unpublished numbers; and that it would preclude consumers from deciding which telemarketing call they want to receive or block.[14]

These conclusions are equally valid today. A national do-not-call database could be massive in size, involving millions of telephone numbers. Establishing and maintaining a database of that size and ensuring its accuracy would be an enormous undertaking. Moreover, the sheer size of the database could effectively preclude many commercial entities from engaging in any telemarketing at all. In order to ensure that they were not contacting a consumer on the national list, they would be forced to scrub their own lists on an ongoing basis against a national list that, as noted, could contain millions of entries. The cost of that process could well be prohibitive for all but the largest commercial entities.

The First Amendment requires that any restrictions on commercial speech be narrowly tailored to ensure that they are no more extensive than necessary to serve the governmental interest at issue. A national do-not-call list would not be narrowly tailored. It would impose substantial costs and sweep with too broad a brush. For this reason alone, a national list poses serious constitutional and public policy concerns.

The Commission expresses concern that given the volume of telemarketing calls, it may be unreasonably burdensome for consumers to request not to be called on a case-by-case basis." The Commission overstates this burden. In order to be placed on a company-specific do-not-call list, a consumer need only ask when he/she receives a telephone solicitation from that company. That is hardly a burden that justifies further restriction on constitutionally protected speech. Thus, the only viable approach to safeguard the commercial speech rights of businesses and

[14] *Id.* at 8760-61.

[15] NPRM at ¶14.

protect the privacy interests of residential consumers that wish to receive telemarketing calls, is a company-specific approach.

Importantly, there are consumers that value and act on the information they receive from telemarketing solicitations. Indeed, were that not the case, and were telemarketing calls viewed by all as mere nuisances, companies would have little reason to pursue this sales channel. As it were, the number of telemarketing calls has increased significantly and, more importantly, so too has the importance of telemarketing in the U.S. economy. As the Commission notes, by some estimates, telemarketing calls generate over $600 billion in sales per year. Clearly, the Commission must tread carefully in this area, and it may not, based on a vocal minority of consumers or mere anecdote, paint with too broad a brush.

SBC recognizes that consumer complaints regarding telemarketing practices have escalated over the last ten years. But a mere increase in the number of complaints — even a large increase — is not, in and of itself, a basis for concluding that the existing regulatory framework must be scrapped. The spike in complaints may be due to a whole range of factors that have nothing to do with the merits of that framework. It may reflect, for example, a *compliance* problem. Indeed, that would hardly be unexpected given the sharp increase in recent years in the number of businesses using telemarketers, and the NPRM itself suggests, *albeit* indirectly, that consumer complaints regarding telemarketing in the wireline category involve *compliance* with the TCPA.[16] A compliance problem, however, should trigger stricter enforcement of existing rules or, at most, modifications to those rules that will facilitate enforcement of those rules. It does not warrant an entirely new framework, certainly not without evidence — absent here — that the existing framework is inherently unenforceable, and that the

[16] NPRM at ¶ 8.

new framework is required for enforceability. SBC notes, in this regard, that there is no reason to assume that a telemarketer that violates its own company-specific telemarketing restrictions would be any more inclined to comply with a national list. Thus, assuming that the complaints do indeed reflect a compliance problem, there is no basis for assuming that a national do-not-call list will remedy that problem. Certainly before the Commission takes that route it should first step up enforcement of its existing telemarketing rules. Only if those measures fail should a national list be further considered.

The spike in complaints may also reflect ambiguities or even gaps in the existing rules. Again, it is impossible to know without an analysis of the complaints — an analysis that, as far as SBC is aware, has not been conducted. To the extent there are ambiguities or gaps, the existing rules can be modified to address them. Without knowing exactly what, if anything, is going wrong in the marketplace, however, the Commission may not simply assume that a company-specific approach is inherently flawed and substitute the more restrictive national registry. Any such action would not be narrowly tailored and would thus flunk the *Central Hudson* test.

B. The Commission should establish a reasonable timeframe within which companies must update their telemarketing lists.

The Commission's existing rules require telemarketers to place a residential subscriber on its do-not-call list at the time the request is made." Although the intent of the rule is clear — to give the swiftest possible effect to customer requests — there is a gap in this rule. Obviously, companies cannot create and disseminate to all of their telemarketing agents new telemarketing lists every time a customer requests that he/she be placed on the do-not-call list. Otherwise, there would be a never-ending cycle of new lists — perhaps multiple lists in a single hour. The

[17] *47* C.R.R. § 64.1200(e).

Commission's rules, however, do not specify how often new lists must be generated and disseminated to telemarketing agents.

The Commission should address this gap and establish a reasonable timeframe for entities to update and disseminate their telemarketing lists to their telemarketing representatives. Many states have addressed the issue. Oklahoma, Kansas, Indiana and California, for example, require their do-not-call lists to be updated quarterly. A similar timeframe may well be appropriate here. In any event, the Commission should set a reasonable timeframe within which companies must update their telemarketing lists.

C. The Commission should retain its established business relationship exemption, with modifications, and time of day restrictions.

The Commission asks whether it should revisit its prior determination that the TCPA permits an "established business relationship" exemption from the restrictions on artificial or prerecorded message calls to residences.[18] The "established business exception" is statutory and cannot be eliminated or disregarded by the Commission. Specifically, Section 227(a)(3) expressly exempts calls to persons "with whom the caller has an established business relationship" from the definition of "telephone solicitation."[19] While Section 227(c)(1)(d) permits the Commission to consider whether the "established business relationship" exemption should be limited or eliminated, that section does not permit the Commission to ignore this exemption. Rather, in the event the Commission determines that changes to or elimination of the exemption is warranted, the Commission is directed to "propose specific restrictions to the Congress."" Unless and until Congress modifies the TCPA, telemarketing calls emanating from

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[18] NPRM at ¶34.

[19] 47 U.S.C. § 227(a)(3).

an established business relationship are not subject to the Commission's do-not-call requirements.

In any event, there are sound reasons for retaining the "established business relationship" exemption. Consumers expect that businesses with which they have an established relationship will inform them of other service or product offerings that may be of interest. Indeed, consumers are often irritated if they are not informed of new products, services and pricing plans. In the long distance and wireless areas, for example, some consumers pay more than they may need to because they are unaware of new pricing plans that could reduce their costs. Likewise, consumers expect that their companies will inform them of vertical services that could be of interest to them, and of special offers being made to people who are close to the end of one- or multi-year pricing plans. Providing consumers with this type of information is a critical component of customer care and is thus a basis upon which firms can differentiate themselves in a competitive market.

Not only do customers expect to receive relevant information from companies with whom they have an established relationship, they have the ability without government intervention to ensure that such companies do not engage in unwanted telemarketing. Quite simply, if they are unhappy with the telemarketing practices of companies with whom they do business, they can terminate their business relationship, just as they can terminate their relationship if they do not like the products or services they are receiving. Indeed, given that telemarketing is really just one way in which a company cares for the customers with whom it has an established business relationship, there really is no sound reason to treat telemarketing in this context differently from any other aspect of customer care.

[20] *Id.*, § 227(c)(1)(d)

While SBC thus urges the Commission to retain the existing "established business relationship" exemption, it requests that the Commission rule that the "established business relationship" exemption applies to affiliates — specifically affiliates that provide reasonably-related products or services — of companies with whom a customer has an established business relationship. Companies establish affiliates for all kinds of reasons — for tax purposes, to better track costs and revenues associated with a new venture, and for statutory and regulatory compliance reasons. The way in which a company chooses or is required to do business — that is, whether it chooses or has to provide a product **or** service on an integrated basis or through a structurally separate affiliate — should not automatically dictate its status for telemarketing purposes. This is especially true in the telecommunications industry, where companies strive to meet consumers' need and desire for the simplicity of one-stop shopping, and both Congress and the Commission have recognized the benefits and critical importance of joint marketing. Indeed, a contrary interpretation of the "established business relationship" exemption would be inconsistent with Section 272(g), which authorizes the Bell Operating Companies to jointly market the services of their long distance affiliates and vice versa.

SBC also requests that the Commission expand the "established business relationship" exemption to permit telecommunications carrier to make telephone solicitations to former customers for up to a year after the customer terminates its relationship with the entity. **As** this Commission has recognized, chum can be very high in telecommunications markets as consumers are quick to change providers when offered better pricing plans, services and products. In that context, winback efforts are a fundamental aspect of marketing and often bring valuable benefits to consumers. In order to engage effective winback, however, carriers must have efficient means by which to communicate with those who have recently switched to another

carrier, including telephone contacts. Consumers certainly benefit from such solicitations, as evidenced by the success of winback telemarketing solicitations. Importantly, such an expansion of the business relationship exemption would not prove burdensome to consumers. Consumers always have the option of requesting to be placed on the entity's do-not-call list.

SBC opposes any effort to further define the particular circumstances that would establish a business relationship for purposes of the exemption. There is no evidence that the Commission's existing rules are overbroad. Moreover, by attempting to specify the particular types of relationships that would satisfy the exemption, the Commission risks eliminating legitimate categories of relationships not contemplated or specified in the record. SBC, however, does not oppose a Commission clarification that inquiries regarding business hours or directions do not themselves create an "established business relationship." Such inquiries do not entail a communication regarding an entity's products or services, which is required under the Commission's existing definition. SBC also would not oppose any further clarification that certain other inquiries do not rise to an "established business relationship." However, as noted, SBC does oppose the opposite approach, wherein the Commission would try to identify all types of business relationships subject to the exemption.

The Commission also asks whether a prior business relationship could result from an inquiry about a company's products, services or prices, and if so, should it impose a time limitation for such relationships. A consumer inquiry regarding a company's products, services, or prices constitutes an "established business relationship" under the existing definition. Consumers should expect that a company would provide them follow-up information concerning their inquiry. For example, if a consumer requests information from SBC regarding DSL Internet access service, it is appropriate and reasonable for SBC to contact that consumer in the

future about additional packages, revised prices or other information regarding DSL Internet access offerings. A time limitation is not warranted for such relationships. Where a consumer determines that it no longer wants a solicitation from a company with whom it has made prior inquiries, it can simply request to be placed on the company's do-not-call list.

The Commission also asks whether it should impose more restrictive time of day restrictions, particularly if it establishes a national do-not-call list. The existing time restrictions are sufficient, whether a company-specific or national do-not-call registry is in place. The 8 a.m. to 9 p.m. time frame reasonably balances consumer privacy with telemarketers' need to have sufficient access to consumers, particularly given that many consumers cannot be reached during business hours. To the extent consumer complaints involve noncompliance with these calling restrictions, the Commission should take more stringent measures to enforce its existing rules against those particular companies

D. While company-specific do-not-call lists are sufficient to protect consumer interests, other devices and services provide consumers additional methods of restricting unwanted telephone solicitations.

As the foregoing demonstrates, the Commission's existing company-specific do-not-call requirements are sufficient to protect consumers from unwanted telephone solicitations. Notwithstanding, consumers have additional services and devices at their disposal — devices that previously were unavailable — to further protect them from unwanted solicitations and, importantly, have availed themselves of these options. First, there are private sector national do-not-call lists. The Direct Marketing Association (DMA), for example, offers consumers the ability to place themselves on a national do-not-call list. To date over 4 million consumers have requested to be placed on the DMA's national do-not-call list and at least 5,000 telemarketers are active members of this organization. Even nonmembers use the DMA list. SBC, for example,

uses the DMA do-not-call list as well as its company-specific do-not-call list to remove residential subscribers from its telemarketing lists.

Second, residential consumers increasingly subscribe to Caller ID services to restrict telephone solicitations. Caller ID displays the telephone number and caller name, if available, of an incoming call. Where such information is unavailable, Caller ID will display that the calling information is unknown, unavailable or anonymous. Many consumers do not accept calls from unfamiliar numbers, or they do not accept them at times in which they do not wish to be disturbed. In this respect, Caller ID has empowered consumers and given them an additional way to prevent unwanted telephone solicitations. Approximately 42% of SBC's residential customers subscribe to Caller ID.[21]

Third, consumers use Privacy Manager and Anonymous Call Rejection[22] to restrict blocked calls. Where a telemarketer has chosen to block its identifying information, Privacy Manager will instruct the telemarketer that the subscriber does not accept blocked calls and that the caller must provide its name to complete the call. If the caller agrees, its name is announced to the consumer. Similarly, Anonymous Call Rejection permits consumers to block anonymous calls from callers who have blocked their numbers. Like the company-specific do-not-call requirements, Caller ID, Privacy Manager and Anonymous Call Rejection services enable consumers on a case-by-case basis to determine whether to accept telephone solicitations,

[21] The Commission asks whether it should require telemarketers to provide the caller name and telephone number of the calling party, where feasible. SBC does not oppose this proposal, so long as telemarketers that do not have the capability to provide such information are not forced to do so. As SBC explained in its comments in the FTC proceeding, which are attached hereto, there are complex, technical issues involved in transmitting calling name and telephone number information, which must be recognized and considered by the Commission. *See* SBC Supplemental Comments Filed in the FTC's DNC proceeding at pp. 4-13, attached hereto.

[22] Privacy Manager and Anonymous Call Rejection are subscription services offered by the SBC telephone companies.

thereby permitting them to receive desired solicitations and reject undesired ones. They thereby obviate the need for radical changes to existing requirements, including a national do-not-call registry.

E. The Commission should clarify that its do-not-call requirements are not applicable to business-to-business telemarketing solicitations.

The TCPA and the Commission's implementing rules prohibit certain telephone solicitations to "residential telephone lines" or "residential telephone subscribers."[23] The Commission should clarify that the TCPA, its existing rules and any revised rules adopted in this rulemaking proceeding are applicable only to solicitations to residential subscribers, and not to businesses located in residences. This clarification is important because numerous residential consumers have established businesses at their homes. Given that the FTC is considering the applicability of its do-not-call requirements to certain business-to-business relationships, it is prudent for the Commission to clarify that its rules implementing the TCPA do not include any business subscribers.

The TCPA is clear on its face that Congress intended for the Commission to adopt rules to protect the privacy rights of residential subscribers. In the legislative history of the TCPA, Congress specifically states that the purpose of the bill is to "protect the privacy interests of residential telephone subscribers."[24] Further, Sections 227(b)(1) and 227(c) of the Act expressly use the term "residential telephone line" or "residential telephone subscriber."[25] The fact that Congress did not expressly include the term "business" in these sections demonstrates that Congress did not intend for the Commission to incorporate any businesses in its telemarketing

[23] 47 U.S.C. § 227(b)(1)(B) & (c)(1).

[24] Telephone Consumer Protection Act of 1991, P.L. 102-243, 105 Stat. 2394 (1991).

[25] 47 U.S.C. §§ 227(b)(1) and (c).

restrictions. Accordingly, telemarketers that make solicitations to businesses, including businesses located at residences, are not subject to the Commission's do-not-call requirements.

III. A NATIONAL DO-NOT-CALL LIST WOULD RUN AFOUL OF THE FIRST AMENDMENT.

A national do-not-call list would not survive constitutional challenge under the First Amendment. In determining whether a governmental restriction on commercial speech is permissible under the First Amendment, the Supreme Court in ***Cenfral Hudson*** set forth a four-prong test. Under the ***Central Hudson*** test, the government must first determine if the commercial speech is lawful and not misleading. If these requirements are met, the government can restrict such speech only if it satisfies the remaining three prongs: (1) "it has a substantial state interest in regulating speech; (2) the regulation directly and materially advances that interest; and **(3)** the regulation is no more extensive than necessary to serve the interest."[26] A national do-not-call list almost certainly would not survive the final prong.

In assessing whether a restriction is narrowly tailored, the courts have considered whether less restrictive or less burdensome alternatives are available to accomplish the stated goal.[27] Where such alternatives exist, the courts have held that the nexus between the government's stated interest and the restriction adopted to achieve the interest "may be too imprecise to withstand First Amendment scrutiny."[28]

A national registry requirement would not be narrowly tailored to effectuate the Commission's goal. First, such a requirement would impose far greater restrictions on speech

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[26] *Central Hudson Gas and Electric Corp v. Public Service Commission,* 447 U.S. *557,565* (1980).

[21] *44 Liquormart, Inc. v. Rhode Island,* 517 U.S. 484,529 (1996) (O'Connor, J. concurring).

[28] *Id.* ("The availability of less burdensome alternatives to reach the stated goal signals that the **fit** between the legislature's ends and the means chosen to accomplish those ends may he too imprecise to withstand First Amendment scrutiny.")

than company-specific do-not-call lists and could stifle even desired telemarketing contacts.

Second, nothing in the NPRM shows that this greater burden on speech **is** necessary to serve the privacy interests at issue. In questioning whether a national list should be established, the Commission cites the widespread use of predictive or automatic dialers and answering machine detection technology as possibly reducing the effectiveness of company-specific do-not-call lists. But there is no empirical basis for concluding that these devices have had any material impact on the efficacy of the Commission's company specific do-not-call regime.[29] The other changed circumstance cited by the Commission is the significant increase in telemarketing-related complaints it has received. **As** discussed above, an increase in complaints, in and of itself, offers no basis for concluding that company-specific do-not-call lists cannot protect consumers. At most, this increase indicates that a greater number of consumers are unhappy, justifiably or not, with some telemarketing practice — a development that, if true, provides little basis for fashioning appropriate and duly limited restrictions on constitutionally protected speech.[30] It may **well** be that the Commission needs to heighten enforcement of its existing rules or clarify or modify them in certain respects. There is simply no way, at this point, however, that the Commission could conclude, consistent with ***Central Hudson,*** that company-specific do-not-call lists *cannot* protect consumer privacy interests.

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[29] Equally important, even if they did, the Commission can address this problem directly by establishing rules that ensure that "hang ups" are kept to a minimum. SBC, for example, supports a requirement that the error rate for abandoned calls or "hang ups" not exceed five percent for any company.

[30] Indeed, the increase in complaints may reflect nothing more than the increase in telemarketing calls that has taken place during recent years.

IV. CONCLUSION

For the foregoing reasons, SBC urges the Commission to retain its existing company-specific do-not-call requirements and other rules as specified herein and not adopt a national do-not-call registry.

Respectfully Submitted,

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